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FILED
U.S. DISTRICT COURT
2006 APR 28 A 9 50
DISTRICT OF UTAH

BY: DEPUTY CLERK
IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, : Case No. 2:06CV150 BSJ

Petitioner, :

v. : **REPORT AND RECOMMENDATION**

FAKELELU KATOA, : District Judge Bruce S. Jenkins
Respondent. Magistrate Judge David O. Nuffer

The United States of America filed a petition to enforce its December 1, 2005 IRS Summons ("the Summons") pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Jenkins issued an Order to Show Cause on February 22, 2006, which referred this matter to the undersigned under 28 U.S.C. § 636(b)(3). United States v. Jones, 581 F.2d 816, 817 (10th Cir. 1978) (referring IRS summons enforcement to magistrate judge under 28 U.S.C. § 636(b)(3)).

In the Order to Show Cause ("OTSC"), Respondent was directed to file a written response supported by sworn affidavits to the United States' Petition to Enforce the Summons ("the Petition") within ten days of the OTSC being served upon Respondent. The OTSC informed Respondent that only those issues raised in the written response and supported by sworn affidavits would be considered by the Court and that all allegations in the Petition not contested by the written response and sworn statements would be deemed admitted. See United States v. Balanced Fin. Mgmt., Inc., 769 F.2d 1440, 1444 (10th Cir. 1985). The OTSC also directed the undersigned to convene a

hearing on April 11, 2006 at 10:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause. Respondent failed to provide any response to the Petition to Enforce Internal Revenue Summons. The hearing was convened at the above-mentioned time, at which Respondent requested an evidentiary hearing. However, where, as here, Respondent has failed to properly respond to the Petition to Enforce Internal Revenue Summons, the "court should dispose of the proceeding on the papers before it and without an evidentiary hearing." Id. Respondent has failed to provide a proper response to the Petition to Enforce Internal Revenue Summons to merit an evidentiary hearing and, by failing to file a proper response, has also failed to show cause why Respondent should not be compelled to produce the information requested in the Summons. Thus, the undersigned reports the following:

1. Respondent failed to file any written response supported by sworn statements providing reasons why Respondent should not be compelled to comply with the Summons.

Consequently, the undersigned recommends that:

1. The District Court find that Respondent has failed to show cause why Respondent should not be compelled to comply with the Summons; and
2. The District Court order Respondent to provide the information required by the *June 2, 2006* Summons on or before the close of business on *May 19, 2006* to the IRS, which is located at 50 South 200 East, Salt Lake City, Utah 84111.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The

District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 28 day of April 2006.

BY THE COURT:


DAVID NUFFER, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing Report and Recommendation and Order were mailed, postage prepaid, this 11th day of April, 2006 to the following:

Filia (Phil) H. Uipi
313 East 900 South
Salt Lake City, UT 84111

